case himself as one of theft (section 379), instead of sending the accused before a First-class Magistrate to be tried for robbery (section 392). Here the action of the Second-class Magistrate would be improper but his proceedings would not be void. If the improper action of the Second-class Magistrate had led to a failure of justice as, for instance, by causing the punishment to be inadequate, it would be open to the proper authorities to apply a remedy by instituting a second prosecution on the same facts for the more aggravated offence (section 403, Criminal Procedure Code). It would also, in our opinion, be open to the revising and appellate authorities to set aside the Magistrate's proceedings and order a fresh trial, if such a course was required in the interests of justice but not otherwise; and the reason for setting them aside would be, not that they were void *ab initio* but because they were improper and the interests of justice required them to be set aside."

We accept this as a correct statement of the law, and in the present case we see no sufficient reason for thinking that the learned District Judge exercised improperly the discretion conferred upon him by section 183 (2) of the Criminal Procedure Code or that the interests of justice require that the proceedings before the District Court should be set aside.

The remaining grounds of appeal may be briefly disposed of.

As regards the second ground of appeal, it is sufficient to say that the findings of the learned District Judge as to wrongful confinement and kidnapping are amply supported by the evidence.

As regards the third ground of appeal, we are of opinion that, on the facts as proved, the arraignment of the Appellant on the two charges brought against him, and his trial with the two other accused persons, was fully justified under the provisions of sections 171 and 175, respectively, of the Criminal Procedure Code.

As to the fifth ground of appeal, wo do not consider that the sentences imposed upon the Appellant were in all the circumstances excessive.

Appeal dismissed.

Solicitor for the Appellant—*A. de Mello.*

[ORIGINAL CIVIL JURISDICTION]

TERRELL, J.

November 27, 1934.

RE CHOP GUAN SENG.

[SINGAPORE BANKRUPTCY No. 374 of 1922]

Duties of Official Assignee—Ordinance No. 44 (Bankruptcy) S. 40 (3); S. 64 (2) Bankruptcy Rule 197 (1).

A Chinese Chop offered a composition of 20 cents in the dollar to its creditors. The proposal for composition was accepted by all the creditors but one, who had previously refused to sign a document purporting to be an agreement for composition. This document was unregistered. The dissenting creditor presented a petition in bankruptcy upon which a Receiving Order was made against the firm. Subsequently the individual partners of the firm were adjudged bankrupt. No notice of application to adjudge them bankrupt was given to any of them. The only proof filed was that of the petitioning creditor's debt. One of the partners in the bankrupt firm who at the time knew nothing about such proceedings subsequently learnt of the Order of Adjudication passed against him and he thereupon notified the Official Assignee of his intention to satisfy the debt in this bankruptcy. Having regard to the composition paid to the creditors before the firm's bankruptcy, the Official Assignee was in doubt what proper steps he should take in the events that had happened. He applied to the Court for directions.

Held, that the Official Assignee was under no duty to recover from the creditors the amount paid to them as composition before bankruptcy supervened.

Held further, that in the event of a dividend being declared a notice to the creditors individually under Bankruptcy Rule No. 191 (1) was unnecessary.

Obiter, the creditors could still prove if they so desired, but they might have to repay the amount that they had received by way of a fraudulent preference.

Motion for directions by the Official Assignee.

The facts are sufficiently stated in the Judgment.

E. B. Williams, Official Assignee, Applicant on the Motion.

Paulusz, for Quek Chia Yak the partner in the bankrupt Firm.

Cur. Adv. Vult.

TERRELL, J.—On the 1st September, 1922, a Receiving Order was made against Chop Guan Seng. It appeared that there were originally 88 creditors, but 87 of them had before the date of the Receiving Order accepted a composition of 20 per cent. and signed a Chinese document which, however, provided that in the event of any of the creditors refusing to sign the document, it should be considered null and void. The petitioning creditor in fact refused to sign it. obtained a Receiving Order against the Chop and proved for $800.00. The composition was never registered in accordance with the provisions of section 20 of Ordinance No. 44 (Bankruptcy) and is therefore invalid. None of the 87 creditors however proved.

On the 23rd November, 1923, the eight partners, including one Kwek Chia Yiak, were adjudicatd bankrupt. No effort was made to serve Kwek Chia Yiak with notice of the application and he in fact had no idea that he had been so adjudicated until quite recently. He only had a small share of $500.00 which he was content to lose. He was away in China when the Chop failed and has for some years been carrying on business in Malacca, blissfully ignorant of the implications involved by his adjudication in 1923.

As regards the want of notice to Kwek Chia Chia Yiak, although as a matter of practice such

notice should always be given, the jurisdiction of the Court to make an adjudication order is not ousted if no notice is in fact given, see *In re Ponsford*, 1904, 2 K.B. p. 704.

Kwek Chia Yiak having been apprised of his unpleasant position is perfectly ready to pay in full the only creditor who has proved.

At this point the Official Assignee has come to the Court to ask for directions on the following points:—

(1) Whether it is the duty of the Official Assignee to take steps to recover from the 87 creditors referred to in his affidavit of the 18th day of October, 1934, the $10,609.79 alleged to have been paid to them in May 1922;
(2) whether the 87 creditors are entitled to prove against the joint estate of Chop Guan Seng;
(3) whether in the event of a first dividend being declared in the bankruptcy the 87 creditors are entitled to notice under Bankruptcy Rule 191 (1).

As regards the first point, it was no doubt the duty of the Official Assignee at the time to get back the money paid to the 87 creditors for the benefit of the creditors generally. As the payments were not protected by a properly registered composition deed, they were clearly fraudulent preferences. But that was 12 years ago and now the payments are *prima facie* statute barred. The answer to the first question therefore is that it is not the duty of the present Official Assignee to take any such steps.

As regards the second point, section 40 (3) of the Ordinance provides that all debts and liabilities.....to which the debtor is subject at the date of the receiving order..... .....shall be deemed to be debts provable in bankruptcy.

If therefore the debts were provable at the date of the Receiving Order, there can be no question of limitation as against the creditors (see *Williams*, 14th ed. p. 158) and *prima facie* the debts are provable unless the 87 creditors are estopped by the fact that they signed the unregistered deed. This point was carefully considered in the case of *In re a Bankruptcy Notice*, (1924) 2 Ch. p. 76, and this case makes it clear that, quite apart from the saving clause that all the creditors must accept the composition, the creditors cannot be estopped by a document which the legislature has declared to be invalid. I have no doubt therefore that the 87 creditors can still prove. They would of course have to give credit for the 20% which they accepted and it is possible that if they sought the benefit of the Ordinance they might have to repay the amount which they had received by way of fraudulent preference. This point has not been argued before me and I give no decision upon it.

As regards the third point, section 62 of the Ordinance makes it clear that the Official Assignee need not make reservation for the possible claims of the 87 creditors. Nor need he notify them individually if he decides to distribute a final dividend (see section 64 (2)).

It would appear that the proper course will be for the bankrupt to undergo his public examination which will be a purely formal matter. He can then pay the Official Assignee enough to satisfy the petitioning creditor in full and can apply for his discharge. If as the result of the advertisement of the application for discharge any of the 87 creditors make claims the position can be reconsidered. In the circumstances it appears to be extremely unlikely that they will do so.

Directions Accordingly.

Solicitor for Kwek Chia Yak—
Zehnder Brothers.

[APPELLATE CRIMINAL JURISDICTION]
TERRELL, J.
December 21, 1934.

REX v. A. GOVINDASAMY AND KOH HAK BENG.

[SINGAPORE MAGISTRATES APPEAL No. 51 of 1934]

Criminal Procedure Code Ss. 169 and 175—two accused tried together—Illustration (c) to S. 175 explained—Penal Code S. 193—degree of proof required in trials under such section.

The two accused were tried jointly with giving false evidence in a civil judicial proceeding in the Supreme Court. They each swore an affidavit to support the same application and each of these affidavits was false in certain particulars.

Held, that there was an intention common to both offences which connected them together and enabled the Court to hold that they had been committed in the same transaction and that there was no misjoinder.

Also Held, that there is nothing in the Penal Code or the Evidence Ordinance which requires a degree of proof in the case of trials under S. 193 of the Penal Code different from that required in other criminal cases.

Magistrate's Appeal.

The facts and arguments sufficiently appear from the Judgment.

K. Seth, for both Appellants.
Adrian Clark, D.P.P., for Crown.

Cur. Ad. Vult.

TERRELL, J.—In May 1934 the second accused commenced a civil suit No. 241 of 1934 against one Koh Phee Tin, the complainant in the case. Shortly after the issue of the writ the second accused applied *ex parte* for the arrest of the complainant under the provisions of section 680 of the Civil Procedure Code, supporting his application with an affidavit sworn on the 11th May, 1934. The application was further sup-